

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1882 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SUNPACK INDUSTRIES

Versus

RAJUBHAI J CHAUHAN

Appearance:

1. Special Civil Application No. 1882 of 1997
MR NILESH A PANDYA for the Petitioner
MR HETAL B LAKHIA for Respondents Nos. 1-4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 17/09/2004

ORAL JUDGEMENT

Heard the learned advocate Mr Nilesh A Pandya on
behalf of the petitioner.

2 In the present petition the petitioner has challenged the award passed by the Labour Court in Reference (LCV) No.503 of 1987 dated 29th August, 1996 wherein the Labour Court, Vadodara, had granted reinstatement in favour of Shri Shankarbhai Shanabhai Rajput and Shri Sureshbhai Ganpatbhai Parmar with 25% back wages. The Labour Court has granted 25% back wages from the date of termination to 1st January, 1990 and Rs.5000 as compensation in lieu of reinstatement in favour of workman - Parshottambhai Valjibhai Parmar. The Labour Court has also awarded cost of Rs.1,000.

3 The learned advocate Mr Pandya submitted that the petitioner has not terminated the service of the employees but there was some difficulty on the part of the workmen as they were asked to report for duty at village Kapuria and that is why they stopped attending the work. Therefore, the Labour Court has committed an error in granting reinstatement with 25% back wages. He also submitted that during the pendency of the reference a letter was written to the workmen to report for duty but they did not report for work. He also submitted that the Labour Court has committed an error in granting back wages in favour of respondent-workmen. Therefore, according to him, the Labour Court has committed gross error, which requires interference by this Court.

4 I have considered the submissions made by the learned advocate Mr Pandya. The workmen filed statement of claim vide exh.6 before the Labour Court. According to the case of the workmen, they were working with the petitioner on daily wage of Rs.17.50. The petitioner had not paid the salary for the period from 1st May, 1987 to 30th May, 1987. The Minimum Wages Act was applicable to the petitioner and therefore they demanded for presence card, Earned Leave card and identity card but they were not provided the same and their services came to be terminated by the petitioner. According to the case of the workmen, the petitioner was not having the electricity connection and therefore they were taking the electricity connection from Laxmi Engineering and because of the checking the electricity connection has been disconnected by the authority, which has ultimately resulted into change of place of work with effect from 25th April, 1987 and the establishment was shifted from city to village Kapuria where the respondents-workmen were required to report for duty. That was objected to by the respondent-workmen and a demand of some more amount with bicycle was made but the same was not accepted by the petitioner and ultimately on 30th May, 1987 by oral order the services of the respondent-workmen

were terminated. Subsequently, out of five workmen one Jasubhai Chauhan was reinstated in service and some new employees were also employed. The petitioner filed reply vide exh.10 in the said written statement dispute about bicycle and wages was admitted by the petitioner and in respect of Jasubhai Chauhan it was stated that he voluntarily reported for work and Rajubhai Chauhan had settled the matter with the petitioner. The case of the petitioner is that services of the workman was not terminated but they stopped attending for duty. The Labour Court thereafter considered the merits of the matter in paragraph no.6. The Labour Court in paragraph no.6 has observed that in respect of Rajubhai Chauhan the matter was settled and the settlement was produced vide exh.4. The real dispute between the parties as considered by the Labour Court that bicycle was given by the petitioner to the workmen to reach the place of establishment at Kapuria village but the difficulty started when the petitioner started deducting the installment of cycle from the salary of the workmen and therefore the dispute has arisen which has resulted into termination. The place of work was changed by the employer and even in that condition it is the duty of the employer to provide alternative work to the workman. The fact of change of place of establishment is not disputed by the petitioner. According to the workman, the place of work was at a distance and it was not possible for the workmen to reach the place of work without bicycle and for that help from the petitioner was necessary, which was denied by the petitioner and ultimately the petitioner terminated the service of the workman. The Labour Court has considered the deposition of the workman wherein in respect of two workmen Shankarbhai Shanabhai and Sureshbhai both were getting some part of gainful employment and receiving wages of 15 days in each month and therefore the Labour Court has granted reinstatement with 25% back wages considering the evidence of the workmen and in respect of one workman when he was willing to work because he was engaged by some other employer and therefore the Labour Court has granted Rs.5,000/- as compensation in lieu of reinstatement.

5 I have perused the record and notice issued to the workman and evidence of the workman produced by the petitioner. Initially, this Court has not granted any stay against the reinstatement and stay has been granted qua back wages only by order dated 24.4.1997.

6 After perusing the award in question, the termination by the petitioner is clearly established from the record. The place of working has been changed by the

petitioner from City to Kapuria village, which fact is not in dispute. When the employer changes the place of work then he should have provided vehicle to the workman or increased the wages so that they can mitigate additional expenditure or some compensation for the hardship caused to the workmen. However, petitioner did not agree to any condition which was suggested by the workman. The petitioner was also not agreeable to provide bicycles to the workmen. On the contrary, installments of bicycle was deducted from the salary of the workmen. Naturally, it is the clear case of victimisation by not providing vehicle or additional wages to the workman while changing the place of work. The Labour Court has considered this entire aspect and discussed evidence also and according to my opinion the Labour Court has passed balanced order in respect of reinstatement as well as back-wages. The petitioner has not proved any gainful employment of the workmen before the Labour Court. The Labour Court has, therefore, rightly relied upon the oral evidence of the workman in that regard.

According to my opinion this Court cannot reappreciate the evidence and findings recorded by the Labour Court while exercising the power under Article 227 of the Constitution of India. The Labour Court has not committed any error while passing the award in question. Learned Advocate Shri Pandya has not been able to point out any infirmity in the award. Therefore, findings given by the Labour Court which are based on the evidence on record and not contrary to the record cannot be interfered with. According to my opinion, there is no substance in the present petition. Petition is dismissed. Rule is discharged. Interim relief is vacated.

(H.K. Rathod, J.)

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